

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KENNETH REIGNER,)
Plaintiff,)
vs) Civil Action No. 10-1169
BALANCE RECOVERY, INC., et al.,)
Defendants.)

O R D E R

On September 2, 2010, Plaintiff Kenneth Reigner, by his counsel, filed a motion for leave to proceed in forma pauperis. The motion was granted and the complaint was filed on September 7, 2010. After that entry, the docket sheet reflects several entries called "Praecipe to Issue Summons," and summons was issued on November 12, 2010, but to date there is no indication that service has been made on the Defendants. On January 5, 2011, 120 days elapsed since the filing of the complaint.

On January 24, 2011, United States Magistrate Judge Robert Mitchell entered an Order to Show Cause why the case should not be dismissed for failure to make service pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, returnable February 7, 2011 (Docket No. 6). On February 8, 2011, Plaintiff filed an Answer to Rule to Show Cause which, in its entirety, states as follows:

Plaintiff admits to having not served Defendant(s) in the above captioned Matter, Plaintiff's counsel had intended to personally serve Defendant(s), and had planned several times to make a trip to serve Defendant(s), but scheduling problems arose each time. Plaintiff's counsel did not complete the service. Plaintiff requests leave to file for an alias summons, and to serve the Defendant(s) with the summons and complaint.

(Docket No. 7.)

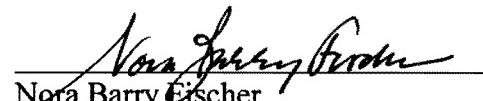
In relevant part, Federal Rule of Civil Procedure 4(m) provides:

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period....

On February 8, 2011, Magistrate Judge Mitchell filed a Report and Recommendation (“R&R”) (Docket No. 8). The R&R concluded that more than 120 days had elapsed since the complaint was filed and the Plaintiff had not shown good cause for failing to make service of process. The R&R recommended that, unless Plaintiff made service of the complaint upon the named Defendants and filed proof of such service with the Clerk’s Office by March 8, 2011, the above-captioned case be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m). The R&R provided that Plaintiff had until February 25, 2011 to file objections thereto. To date, no objections have been filed and the Plaintiff has not filed proof of service with the Clerk’s Office.

AND NOW, this 11 day of March, 2011, upon review of the record and upon consideration of the Magistrate Judge’s Report and Recommendation (Docket No. 8), which is adopted as the opinion of this Court,

IT IS ORDERED that the complaint is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m).



Nora Barry Eischer
United States District Judge